



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1441-99

19 June 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting separation pay and a change in his reenlistment code.

2. The Board, consisting of Mr. Carlson, Mr. Neuschafer and Mr. Exnicios, reviewed Petitioner's allegations of error and injustice on 7 June 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Navy on 30 June 1981 for 4 years and subsequently extended that enlistment for 37 months. The record shows that he served in a satisfactory manner throughout his enlistment. The performance evaluation for the period ending 29 July 1988 indicates that his body fat was 35%. The evaluation comments state, in part, as follows:

"... He was placed on the command's physical readiness retraining program (P RTP) because of not meeting the Navy body fat requirements. When enrolled in the program he was at 35% body fat. In the six months of the P RTP he only reduced to 34% body fat and for this

reason he is being discharged from the Naval service. In his functional area he performs his required tasks but does not demonstrate the initiative and strive to develop improvements or enhancement with(in) his area of responsibility. He does not seek active leadership nor leadership by example within the supply department. He is not recommended for retention or advancement...

An administrative remarks (page 13) entry dated 28 July 1988 states that he was eligible for reenlistment except for the disqualifying factor of obesity. He was honorably discharged on 29 July 1988 at the expiration of his enlistment. Accordingly the DD Form 214 issued at that time, he had completed 14 years, 11 months and 28 days of service. The DD Form 214 has no entry in the reenlistment code block.

d. In his application, Petitioner contends that he should have been paid separation pay like others in his situation. He also points out that there is no entry in the reenlistment code block of the DD Form 214.

e. The Board is aware that separation pay for enlisted members was not authorized in the Navy until 19 August 1991 and before that date there was no separation pay entitlement. Additionally, regulations allow for the assignment of an RE-3T or an RE-4 reenlistment code when an individual is denied reenlistment due to obesity.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that in the last performance evaluation he was not recommended for reenlistment or advancement primarily because of his obesity. Additionally, the page 13 entry shows that he was recommended for reenlistment except for the disqualifying factor of his obesity. Given his satisfactory record of service, the Board concludes that the record should be corrected to show that he was assigned an RE-3T reenlistment code on 29 July 1988.

Concerning Petitioner's request for separation pay, the Board notes that there was no entitlement for such pay in the Navy until 19 August 1991. Therefore, there is no basis for the payment of separation pay and he has been treated no differently than others denied reenlistment for obesity at the time.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that

on 29 July 1988 he was assigned an RE-3T reenlistment code.

b. That his request for separation pay be denied.

c. That this Report of Proceedings be filed in Petitioner's naval record.

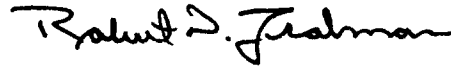
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



For W. DEAN PFEIFFER
Executive Director